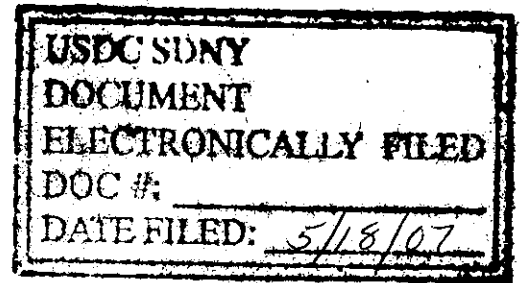


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- X  
ORIX FINANCIAL SERVICES, INC.,  
formerly known as Orix Credit Alliance, Inc.,

Plaintiff,

-against-

DEBORAH SOLACE,

Defendant.  
----- X

:  
:  
: 06 Civ. 9953 (AJP)

: **OPINION AND ORDER**

**ANDREW J. PECK, United States Magistrate Judge:**

Defendant Deborah Solace signed guarantees for equipment leases from Orix to her husband's business. Her husband and his business defaulted on the lease payments and filed for bankruptcy, but Ms. Solace did not file for bankruptcy. Orix has sued Ms. Solace on her guarantees. Presently before the Court, pursuant to 28 U.S.C. § 636(c) (Dkt. Nos 14-15), is plaintiff's summary judgment motion. (Dkt. No. 17; see also Dkt. Nos. 18-22.) Earlier in this action, Ms. Solace stipulated that she has no defense to Orix's claims (Dkt. No. 16: 12/12/06 Conf. Tr. at 17), and she has not responded to Orix's summary judgment motion, despite having asked for and obtained an extension.

For the reasons set forth above, the Court grants summary judgment for Orix against Ms. Solace for \$1,290,892.40 including accrued interest.

Because Ms. Solace has conceded liability, the facts only will be briefly stated.<sup>1/</sup>

Ms. Solace's husband's company, Solace Transfer Inc., leased equipment from Orix (or its predecessors in interest), and Ms. Solace personally guaranteed Solace Transfer's payment obligations under the leases. Solace Transfer defaulted in its monthly rental payments, and Orix repossessed and sold the leased equipment. After crediting Solace Transfer for lease payments and sales proceeds from the equipment sales, Solace Transfer – and Ms. Solace as Solace Transfer's guarantor – owed Orix the following principal amounts, as of March 12, 2003:

1. Lease 1 (12/23/97):	\$16,099.21
2. Lease 2 (10/1/98):	63,575.24
3. Lease 3 (1/26/00):	150,240.02
4. Lease 4 (1/31/00):	66,927.44
5. Lease 5 (3/9/00):	35,747.50
6. Lease 6 (7/10/00):	306,920.61
Total	<u>\$639,510.02</u>

The lease agreements also provide for a "delinquency charge" of 1/15 of 1% per day (which equals 24% per year) from the date payment was due, until paid.<sup>2/</sup> From March 12, 2003 until

---

<sup>1/</sup> The facts are set forth in the affidavit of Orix Vice President Yvonne Kalpakoff, and the exhibits thereto (containing the lease and guarantee agreements and Orix's records of payments). This Opinion will not cite to the specific paragraphs or exhibits in summarizing the facts.

<sup>2/</sup> Courts have upheld the very same Orix 1/15 of 1% delinquency charge. E.g., Orix Credit Alliance, Inc. v. Northeastern Tech. Excavating Corp., 222 A.D.2d 796, 796-98, 634 N.Y.S.2d 841, 842-43 (3d Dep't 1995) (Upholding Orix 1/15 of 1% delinquency fee against charge of usury. "Initially, we note that because a lease does not constitute a loan or forbearance of money, it does not fall within the definition of usury. . . . [I]t is clear that the  
(continued...)

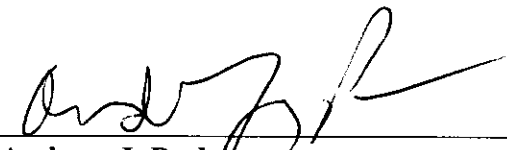
May 18, 2007 is 1,528 days. Interest to date therefore is \$651,382.38 (1/15 of 1% times \$639,510.02 times 1528). Because Orix has not documented its attorneys' fees, the Court does not award it any amount for attorneys' fees.

### CONCLUSION

Because Ms. Solace conceded that she has no defense to Orix's claim, and Orix's uncontested evidence demonstrates the amounts due on leases that Ms. Solace guaranteed, Orix is entitled to summary judgment in the amount of \$639,510.02 plus \$651,382.38 accrued interest, for a total of \$1,290,892.40. The Clerk of Court shall enter judgment for that amount and close the case.

SO ORDERED.

Dated: New York, New York  
May 18, 2007

  
\_\_\_\_\_  
**Andrew J. Peck**  
United States Magistrate Judge

Copies to: Lewis M. Smoley, Esq. (Fax)  
Deborah Solace (Regular & Certified Mail)

---

<sup>2/</sup> (...continued)  
agreement was a lease and the defense of usury inapplicable."); Orix Fin. Servs., Inc. v. Andry, 06 Civ. 1262, 2006 WL 2466814 at \*1 (S.D.N.Y. Aug. 25, 2006) (Peck, M.J.); Orix Fin. Servs., Inc. v. Brewer, 03 Civ. 2957, 2001 WL 34629830 at \*2-3 (S.D.N.Y. Aug. 2, 2001) [sic - 2004]; Womblers Charters, Inc. v. Orix Credit Alliance, Inc., 97 Civ. 6186, 1999 WL 988546 at \*1 (S.D.N.Y. Nov. 1, 1999); see also, e.g., Citipostal, Inc. v. Unistar Leasing, 283 A.D.2d 916, 919, 724 N.Y.S.2d 555, 559 (4th Dep't 2001); Agristoc Leasing v. Barlow, 180 A.D.2d 899, 901, 579 N.Y.S.2d 476, 478 (3d Dep't), appeal denied, 80 N.Y.2d 826, 587 N.Y.S.2d 908 (1992); cf. Penal Law §§ 190.40, 190.42 (criminal usury is rate exceeding 25% per annum).